

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10

11 KRISTINA ENNIX SLAUGHTER and
12 MITCHELL SLAUGHTER,

13 Plaintiffs,

14 vs.

15 CITY OF EMERYVILLE, EMERYVILLE
16 POLICE DEPARTMENT, E. WHITE (#307) and
17 S. ANDRETICH (#339), individually and in their
18 official capacities; VICTORIA'S SECRET,
19 CLAUDIA SOTO, ABERCROMBIE & FITCH,
20 and MELISSA BASFIELD,

21 Defendants.
22
23
24
25
26
27
28

) Case No. C08-01552 PJH

) The Honorable Phyllis J. Hamilton

) **[PROPOSED] ORDER GRANTING**
) **DEFENDANTS VICTORIA'S SECRET**
) **STORES, LLC AND CLAUDIA SOTO'S**
) **MOTION TO DISMISS FOR FAILURE**
) **TO STATE A CLAIM, OR, IN THE**
) **ALTERNATIVE, FOR A MORE**
) **DEFINITE STATEMENT**

) [Fed. R. Civ. Proc. 12(b)(6), 12(e)]

) Date: June 18, 2008

) Time: 9:00 a.m.

) Ctrm: 3, 17th Floor

) Action Filed: March 20, 2008

) Trial Date: None Set

1 Defendants Victoria's Secret Stores, LLC ("VSS") and Claudia Soto's ("Soto")
2 ("Defendants") Motion to Dismiss or in the alternative, Motion for More Definite Statement
3 ("Motion") was heard on June 18, 2008 at 9:00 a.m. in Courtroom 3, 17th Floor, the Honorable
4 Phyllis J. Hamilton presiding, of the above-entitled Court, located at 450 Golden Gate Ave., San
5 Francisco, California. Alison L. Tsao of Carlton, DiSante & Freudenberger LLP appeared on
6 behalf of Defendants Victoria's Secret Stores, LLC and Claudia Soto, and Jivaka Candappa of The
7 Law Office of Jivaka Candappa appeared on behalf of Plaintiffs Kristina Ennix Slaughter and
8 Mitchell Slaughter.

9 Having considered the papers in support of and in opposition to the Motion as well as the
10 arguments of counsel, the Court rules as follows:

11 (1) Pursuant to Federal Rule of Civil Procedure ("FRCP") 12(b)(6), Plaintiffs' first and third
12 causes of action under 42 U.S.C. § 1983 shall be dismissed with prejudice because Defendants are
13 not state actors proceeding under color of law.

14 (2) Plaintiffs' fifth cause of action under Government Code § 815.2 ("The California Tort
15 Claims Act") shall be dismissed with prejudice because Defendants are not public entities.

16 (3) Plaintiffs' eleventh cause of action under California Civil Code § 52.1(b) ("The Bane
17 Act") shall be dismissed with prejudice because Defendants did not commit any acts or threats of
18 violence, coercion or intimidation against Plaintiffs.

19 (4) Plaintiffs' twelfth cause of action under California Civil Code § 51.7 ("The Ralph Civil
20 Rights Act") shall be dismissed with prejudice because Defendants did not commit any acts or
21 threats of violence, coercion or intimidation against Plaintiffs on the basis of their race, or on any
22 basis.

23 (5) Plaintiffs' eighth cause of action for intentional infliction of emotional distress shall be
24 dismissed with prejudice because Defendants did not engage in any extreme or outrageous conduct
25 with the intent to injure Plaintiffs.

26 (6) Plaintiffs' ninth cause of action for invasion of privacy shall be dismissed with prejudice
27 because Defendants did not commit any acts that constituted an impermissible intrusion into an
28 area upon which Plaintiffs had a reasonable expectation of privacy.

(7) Plaintiffs' tenth cause of action under Civil Code § 46 shall be dismissed with prejudice because Defendants' statement was absolutely privileged under Civil Code § 47(b) as a report made in an official proceeding authorized by law.

(8) Plaintiffs' thirteenth cause of action for negligence and negligence per se shall be dismissed with prejudice because Plaintiffs fail to allege the breach of any duty owed by Defendants to Plaintiffs that proximately caused their injuries.

In the alternative, Plaintiffs are ordered to file a more definite statement pursuant to FRCP 12(e) as to the following causes of action on the grounds that Plaintiffs' causes of action lack sufficient facts and are too imprecise and ambiguous:

(1) The tenth cause of action under Civil Code § 46 (slander per se) shall be amended to specify facts sufficient to substantiate the elements of the claim.

(2) The eleventh cause of action under Civil Code § 52.1(b) shall be amended to specify facts sufficient to substantiate the elements of the claim.

(3) The twelfth cause of action under Civil Code § 51.7 shall be amended to specify facts sufficient to substantiate the elements of the claim.

(4) The eighth cause of action for intentional infliction of emotional distress shall be amended to specify facts sufficient to substantiate the elements of the claim.

(5) The ninth cause of action for invasion of privacy shall be amended to specify the facts sufficient to substantiate the elements of the claim

(6) The thirteenth cause of action for negligence and negligence per se shall be amended to specify facts sufficient to substantiate the elements of the claim.

IT IS SO ORDERED.

Dated: June __, 2008

By: _____
THE HONORABLE PHYLLIS J. HAMILTON
UNITED STATES DISTRICT JUDGE